

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-4955

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RAYMONT DAVID BROWN,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Bluefield. David A. Faber, Chief District Judge. (CR-03-155-1)

Submitted: July 28, 2006

Decided: August 11, 2006

Before WILKINSON, GREGORY, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Derrick W. Lefler, GIBSON, LEFLER & ASSOCIATES, Princeton, West Virginia, for Appellant. Charles T. Miller, United States Attorney, John L. File, Assistant United States Attorney, Beckley, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Pursuant to a plea agreement, Raymont David Brown pled guilty to distribution of a quantity of cocaine base ("crack"), in violation of 21 U.S.C. § 841(a)(1) (2000). Brown appealed the district court's original sentence of 137 months in prison. We vacated Brown's sentence and remanded for resentencing, concluding that, under United States v. Booker, 543 U.S. 220 (2005), Brown's sentence violated the Sixth Amendment.

Upon remand, the district court sentenced Brown to 115 months in prison, based on the original guideline calculation as modified to reflect a two-level reduction in offense level granted pursuant to the government's post-remand Fed. R. Crim. P. 35(b) motion for a reduction in sentence. Brown timely appealed.

Brown argues that his sentence following Booker violates his due process rights, as informed by ex post facto principles. This claim is foreclosed by our recent decision in United States v. Davenport, 445 F.3d 366 (4th Cir. 2006).

Accordingly, we affirm Brown's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED